

**Communication to Record Substance of Interview**

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Dated: December 23, 2010

Electronic Signature for Barbara A. Saltsman: / Barbara A. Saltsman /

Docket No.: 1258\_3378US

(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent Application of:

Ulrich Wiesner et al.

Application No.: 10/536,569

Confirmation No.: 2178

Filed: May 2, 2006

Art Unit: 1639

For: FLUORESCENT SILICA-BASED  
NANOPARTICLES

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Examiner: C. M. Gross

**COMMUNICATION TO RECORD SUBSTANCE OF INTERVIEW**

Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**Remarks/Arguments** begin on page 2 of this paper.

### **REMARKS**

A telephone interview was conducted on September 30, 2010 with the following persons participating: Examiner Christopher M. Gross, Applicant Ulrich Wiesner, Applicant Hooisweng Ow, Applicant's attorney Anne Schneiderman, Applicant's representative Brian Ho, and licensee Hybrid Silica, Inc.'s representative Kenneth Wang. Procedural matters were discussed, specifically:

(1) Examiner Gross suggested that in the Applicants' response to the outstanding Final Office Action dated July 7, 2010, the rejection of claims 46 and 47 under 35 U.S.C. 112 be addressed, that evidence be submitted that overcomes the new matter rejection, and that claim 47 be amended to recite limitations that are supported by the specification of the present application (US 2006/0183246), which incorporates by reference non-provisional application U.S. Ser. No. 10/306,614 ("the '614 application," US 2004/0101822) filed Nov. 26, 2002; and

(2) Examiner Gross suggested that the Applicants submit additional evidence and arguments setting forth reasons for why the teachings of Battersby et al. ("Battersby," WO 00/32542), and in particular, Battersby's teaching of the use of the method of van Blaaderen et al. (1992, Synthesis and Characterization of Colloidal Dispersions of Fluorescent, Monodisperse Silica Spheres Langmuir 8: 2921-2931), are unsuitable for preparing the nanoparticles of claim 40 (and claims 45-53 depending therefrom), and thus, do not render the claimed nanoparticles obvious. The Examiner further suggested that evidence be submitted concerning the unstable silica cores (taught by Battersby) as unsuitable and/or formula 3.1 of Battersby not being applicable toward preparing silica cores with fluorescent dyes throughout the core.

The Applicants and their attorney agreed to submit an amendment and response, which is being filed concurrently herewith and which addresses items (1) and (2) above.

If there are any other fees due in connection with the filing of this response or accompanying papers, please charge our Deposit Account No. 50-0289, under Order No. 1258\_3378US from which the undersigned is authorized to draw.

Respectfully submitted,

Date: December 23, 2010

/Anne M. Schneiderman 43095/ 43,095

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